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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/595,381

04/13/2006

Arne Etzold

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EXAMINER

HOEY, ALISSA L

ART UNIT

PAPER NUMBER

3765

MAIL DATE

DELIVERY MODE

10/20/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/595,381	<b>Applicant(s)</b> ETZOLD ET AL.	
	<b>Examiner</b> Alissa L. Hoey	<b>Art Unit</b> 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 20, 23, 24, 28-32, 34, 35, 37 and 38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20, 23, 24, 28-32, 34, 35, 37 and 38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 08/25/08 has been entered.

### ***Claim Objections***

2. Claim 37 is objected to because of the following informalities: there is no antecedent basis for "the seams for forming the ventilation openings". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 20, 23, 32, 34 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Herbener (US 3,777,764).

Herbener teaches the following:

20. (Currently Amended)

Sports clothing (2, 2A) for playing team sports comprising:

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an upper part (20: upper portion) and a lower part (20 lower portion), said upper part and lower part being sewn together at a seam to form designed in one piece (seam located along the front of portion 20 connection top portion to bottom portion and seam 25 intersecting that seam) said upper part is made of elastic material to fit tightly on and cover a wearer's torso to include the shoulder region (figures 2 and 2A: see claim 1), overshorts (23') are arranged over the lower part (lower part of 20), and the overshorts (23') are sewn onto the lower part at the seam (see seam 25), and the lower part is made of elastic material to fits tightly along the wearer's thighs (see claim 1: elastic material garment).

23.(Currently Amended) The sports clothing in claim 20, wherein the upper part, the lower part and the overshorts are connected to one another by a single seam (25).

32.(Currently Amended) The sports clothing ~~as claimed~~ in claim 20, ~~characterized in that~~ wherein an elastic band is arranged in a neck region (strap 21 are made out of elastic material).

34. (Currently Amended) The sports clothing ~~as claimed~~ in claim 20, ~~characterized in that~~ wherein the overshorts are longer than the lower part (see figures 2 and 2A).

35. (Currently Amended) The sports clothing ~~as claimed~~ in claim 20, ~~characterized in that~~ wherein the upper part and/or lower part and overshorts are provided with at least one ventilation opening (lower part has crotch opening and the overshorts has leg ventilation openings).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 20, 23, 24, 29-31, 34 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosenberg (US 1,889,701) in view of Martin (US 5,283,908).

In regard to claim 20, Rosenberg teaches Sports clothing (figure 1) for playing team sports comprising: an upper part (1) and a lower part (3), said upper part (1) and lower part (3) being sewn together at a seam (21) to form designed in one piece (see figures 1-3);

said upper part (1) is made of material to fit tightly on and cover a wearer's torso to include the shoulder region (see figure 1), overshorts (2) are arranged over the lower part (3), and the overshorts (2) are sewn onto the lower part at the seam (21), and the lower part (3) is made of material to fits tightly along the wearer's thighs (page 1, lines 91-100).

However, Rosenberg fails to teach the lower part and the upper part being made of an elastic material.

Martin, teaches an athletic garment made out of an elastic material (column 3, lines 6-9).

It would have been obvious to have provided the sports garment of Rosenberg with the elastic material of Martin, wince the garment of Rosenberg provided in an

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elastic material would provide a stretchable, breathable garment that allows the user to move freely during sporting activities.

In regard to claim 23, Rosenberg teaches wherein the upper part (1), the lower part (3) and the overshorts (2) are connected to one another by a single seam (21).

In regard to claim 24, Rosenberg teaches wherein the seam runs all the way round the hip region (see figures 1-3, identifier 21).

In regard to claim 29, Rosenberg teaches wherein the upper part (1) has at least one button and buttonhole fastener for opening a neck passage (see figure 1, identifiers 7, 8 and 9).

In regard to claim 30, Rosenberg teaches wherein the at least one fastener runs in the shoulder region or along the backbone (figure 1, identifiers 7, 8 and 9).

In regard to claim 31, Rosenberg teaches wherein two sets of button and buttonhole fasteners extending outward from the neck passage across the shoulder region (figure 1, identifiers 7, 8 and 9).

However, Rosenberg fails to teach the fasteners being zipper fasteners, hook and loop fasteners or a lace fastener.

It would be obvious to one having ordinary skill in the art to have provided the fastener being chosen from zipper, hook and loop or lace, or button and buttonhole fasteners, because all of the above fasteners are equivalent securing means and therefore interchangeable as desired.

In regard to claim 34, Rosenberg teaches wherein the overshorts are longer than the lower part (see figures 1 and 2).

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In regard to claim 38, Rosenberg teaches at least one ventilation opening in the from of an incision in the upper part, and traverse to the upper part (see figure 1, identifiers 7, 8 and 9).

7. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rosenberg in view of Martin as applied to claim 20 above, and further in view of Daniel (US 1,930,644).

Rosenberg and Martin fail to teach an elastic band arranged at the seam between the upper part and the lower part.

In regard to claim 28, Daniel teaches an elastic band is arranged at the seam between the upper part and the lower part (see figures 1, 2 and 3: identifier 3).

It would have been obvious to have provided the sports garment of Rosenberg and Martin with the elastic band at the seam of Daniel, since the sports garment of Rosenberg and Martin provided with an elastic with at the seam would provide a form fit seam portion that conforms to the user's body and providing a sliming appearance.

8. Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rosenberg and Martin as applied to claim 20 above, and further in view of Diamond (US 2,141,239).

Rosenberg and Martin fail to teach the thread at the seams being elastic material.

In regard to claim 37, Diamond teaches a garment with a thread of highly elastic material is used for producing the seams (figures 3 and 4: column 1, lines 4-10).

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It would have been obvious to have provided the sports garment of Rosenberg and Martin with the elastic seaming of Diamond, since the sports garment of Rosenberg provided with an elastic thread seam between the upper part and lower part and the seams for forming the ventilation openings would provide a garment that has seams that can stretch during the user's movements and provide greater resistance to breaking.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and can be found cited in PTO-892 form submitted herewith.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-4985. The examiner can normally be reached on M-F (8:00-5:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alissa L. Hoey/  
Primary Examiner, Art Unit 3765